

# THE STATE OF THE CASE.

As to the Money lent by Mr. *Chambers* and others to the Lord *Lexington* and others, and paid by them to Col. *John Hutchinson*.

1. That *John Chambers* lent to the Lord *Lexington* and others the summe of 1500 l. in or about 1642.
  2. That *William Barret* lent the summe of 530 l. in or about 1642.
  3. That *Hercules Clay* lent 600 l. or thereabouts in or about 1643.
    1. *Hercules Clay* dyed in 1644. before any actual Sequestration, leaving the money to Infants.
    2. *William Barret* dyed in Aug. 1646. before any actual Sequestration, leaving the money payable to his Wife and Children.
    3. *John Chambers* dyed about 1647. or 1648. before any actual Sequestration, being never questioned as a Delinquent in his Life.
  25. Apr. 1649. Col. *Hutchinson* procures an Order from the then pretended Parliament, to be paid his Arrears out of concealed Delinquents moneys, as he had or should discover.
  25. July 1649. He procures an Order from the pretended Committee of Advance, &c. for Sequestring the moneys of the Obligees being all dead, as also for the payment thereof unto himself.
- By vertue of these Orders he forces the money to be paid, and requires the Bonds to be delivered in to be Cancell'd, and upon *William Wharton* his refusal to deliver up *Barret's* Bond, he causes him to be taken in Custody; whereupon he did deliver up the said Bond to get his Liberty.
- That some part of the money lent by *Barret* was the moneys of others, by whom he was entrusted to lend the same upon Security.
- That after *Barret's* death, *William Wharton*, who married his Executrix, hath been sued for the said money, and forced to pay the same to one Mrs. *Rogers*, to whom he paid 160 l. and spent in suit 180 l. to defend himself.
- That Col. *John Hutchinson*, did know and was acquainted, that the moneys did belong to persons unsequestrable, before it was paid in to him from the Obligors, and that the Obligees were dead before his discovery.
- Col. *Hutchinson* hath confessed the receipt of 2690 l. lent by the persons aforesaid, but sayes, he received the same out of the Treasury, albeit, it hath been proved before Committees of both Houses, he received it from the Obligors.
- Since the hearing before the Lords and Commons, Col. *Hutchinson* hath printed his Case, and objects, which we answer as followeth.
- The Col. objects in his Printed Case, That the money was sequestred in the Lord *Lexington's* and others the Obligors hands, in or before Sept. 1648. by the Committee of Lords and Commons, an unquestionable Authority as yet she says, albeit it was not paid into the Treasury till 1649. and then by the said Lord and Obligors paid into the Treasury.
1. To this is answered, The Order made in Sept. 1648. was only minatory and never executed, for by latter Orders in April 1649. the parties to whom this money belonged were Ordered to be heard against payment of it, and publication of depositions in the case then Ordered also, so as no judgment was had in the Case, nor were either the Obligees or Obligors, as to this money, Sequestred before the Kings Death.
  2. The money was actually paid to Col. *Hutchinson's* own hands in 1649. and 1650. and not into the Treasury.
  - Col. *Hutchinson* objects, That the money had been paid into the Treasury in 1648. but that the Lord *Lexington* desired forbearance, which he assented unto, and therefore he did not force payment of the money, but the Committee did it.
  - To this is answered, what the Committee did was upon Col. *Hutchinson's* account, by the Orders obtained the 25. April. and 25. July 1649. He receiving the benefit of this money by those Orders which were obtained by his own unjust prosecution.
  3. He objects, He did no more then others would have done to get his Arrears paid out of discoveries.
  - To this be answered, no man could by any Rules of that Committees pretended Justice have benefit of this discovery: For the parties who lent the money were all dead long before the Discovery or Sequestration, which the Col. well knew; as also that the money was most part Orphans money, which was proved both before the Committee of Lords at the last hearing, and before the Committee of Commons, Col. *Hutchinson* then present.
  - Col. *Hutchinson* in his printed Case cites an Extract out of the Treasurers books, and That the money was paid to him in pursuance of an Order made in Sept. 1648.
  - To this we answer, That the Acquittances given by him to the Treasurer were in pursuance of two Orders made in April 1649. and in July 1649. as by Mr. *Lane* the Treasurers hand and examination of his books is testified by *George Wharton*.
  - He also insists upon it; That it is very severe he should be the only person should repay the moneys he received for his Arrears, and his Family be thereby undone.
  - To this is answered, if by the lawful execution of the Orders of the Committee of Lords and Commons it had been taken away in the life-time of the parties Obligees, and not been Orphans money, and that the bonds had been delivered up, and the Obligors thereof acquitted, it might have deserved some consideration; but there being such indiscreet practises to get it sequestred from persons that were long dead before, and against Widows and Children that were innocent, and all this by Col. *Hutchinson* and the Obligors being again liable to pay it.
  - The Questions will be but these: 1. Whether the innocency of the Widow and Fatherless, or Col. *Hutchinson's* oppression, shall be more favoured? or 2. Whether to preserve his ill-gotten Estate the Lord *Lexington* should pay the money twice?
  - Lastly, to evince his practises and force upon the Lord *Lexington* and others, it is desired his own menacing Letters writ in 1649. may be read, whereby he owns the whole prosecution of the business, and assumes a power to lay on Sequestration as he pleased; which manifests the money was not sequestred untill 1649. when by his Agents and for his benefit it was then and not before actually sequestred, and paid in to his use.

Since the printed Case annexed, Col. *Hutchinson* appealed from the Committee of Lords unto a whole House, and there at large was heard by his Councell at the Bar, at which time the Act of Pardon and Oblivion being past; his Councell did insist upon several branches of the Act for to acquit Col. *Hutchinson*, and his Estate from being made liable to repayment of the money.

1. Upon the 1. Paragraph, that he was acquitted because the offence was not excepted in the body of the Act.
  2. Upon the 3. Paragraph page 23. that he ought not to be molested in his Person or Estate for the money in question, because all personal actions and causes of actions for any thing done by vertue or colour of Authority, to be discharged.
  3. Upon the 2. Paragraph pag. 27. viz. That no Military or Commission-Officer should be called to account.
  4. Upon the 1. Paragraph pag. the 31. That he having paid the money into the publick Treasury, ought by force of the Paragraph to be pardoned.
- To which the Lord *Lexington's* Councell did reply in short.
1. That the Session continuing, the Act of Pardon was no bar to the parties relief of the Lord *Lexington* and the persons concerned in his Bill.
  2. That Col. *Hutchinson* as to the matter for which the Bill is now prepared, was by judgement of the House of Commons excepted out of the Pardon in a particular proviso, notwithstanding Col. *Hutchinson* endeavoured to prevent the same, and the proviso sent up to the Lords House with the Act of Pardon, which their Lordships would have passed as well as the Commons had done.
  1. But that their Lordships saw it necessary to expedite the Act without clogging it with too many proviso's upon particular mens accounts. Especially where relief as in this Case might more properly be had by an Act.
  2. For that it did concern a Peer of their own House, they therefore thought fit to propose a relief for him by an Act on purpose, and rather then by a proviso, and therefore directed the Bill to be brought in before the Act of Pardon passed; which was accordingly done, and twice read before the Act of Pardon passed.
  3. That this Act in construction of Law if past this Session of Parliament, would and ought to be construed as from the first day of the Parliament sitting, as well as the Act of Pardon, and so the Act of Pardon could never be intended to take away the effect of this Act, which in judgement of Law was contemporary with it.
- Upon debate of the whole matter before their Lordships by Councell on both sides at the Bar, their Lordships (notwithstanding what was offered by Col. *Hutchinson's* Councell) passed the Act upon the 3. reading, and so it is hoped the House of Commons will do the same; the cause of relief having already been manifestly made appear to them, and the poor persons concern'd, having at great charge for many moneths attended both houses of Parliament for their relief.
- This was the State of the Case when the Act came down to the House of Commons, but coming just upon their rising, and there being some Mistakes both in the penning it and prosecution, it was laid aside; yet those Gentlemen who voted against it, declared their judgment that the Petitioners ought to be relieved out of the Colonels Estate.